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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RAUL FERNANDEZ, Defendant and Appellant.	H042665 (San Benito County Super. Ct. No. CR-12-00954)

In 2012, defendant Raul Fernandez pleaded no contest to felony transportation of marijuana (former Health & Saf. Code, §11360, subd. (a)) and admitted three prior prison term allegations. The trial court sentenced him to a "split sentence" of seven years, with two years to be served in county jail and five years suspended with mandatory supervision. (Pen. Code, § 1170, subd. (h)(5)(B)).[1] The seven-year term included three one-year enhancements for prior prison terms (§ 667.5, subd. (b) (hereafter section 667.5(b))).

On July 1, 2015, defendant admitted violating the terms of his mandatory supervision. At that time, the court revoked mandatory supervision and ordered defendant to serve the balance of his previously imposed sentence. Defendant appeals from that order.

On appeal, defendant seeks to have the judgment modified based on two changes in the law. First, the Legislature recently amended Health and Safety Code section 11360

[1] All further statutory references are to the Penal Code unless otherwise indicated.

to add the element of intent to sell to the crime of transporting marijuana. (Stats. 2015, ch. 77, § 1, eff. Jan. 1, 2016.) Defendant contends that his felony conviction cannot stand because there was no evidence he intended to sell the marijuana he was transporting. Second, defendant requests this court to strike the section 667.5(b) prior prison term enhancements because the convictions underlying two of them have been redesignated as misdemeanors pursuant to Proposition 47.

We conclude that the amendment to Health and Safety Code section 11360 does not apply retroactively to defendant because his conviction was final before its effective date. We further conclude that Proposition 47 does not apply retroactively to require the striking of a properly imposed prison prior enhancement when the conviction underlying the enhancement subsequently is reduced to a misdemeanor. We shall affirm the order.

I. BACKGROUND

A. Factual Background

On the afternoon of June 22, 2012, William Hutchison, an officer with the San Benito County Sheriff's Office, observed defendant driving a van. Aware that there was a current parole violation warrant for defendant's arrest, Hutchinson pulled behind the van in his patrol car and activated the car's overhead red light. Defendant continued to drive, making two turns and failing to stop at two stop signs. When defendant eventually came to a stop, Hutchinson ordered defendant out of the vehicle and took him into custody. Hutchinson found two glass smoking pipes in defendant's front pants pocket. A vehicle search yielded a two-foot tall marijuana plant.

B. Procedural Background

1. *The Complaint*

The San Benito County District Attorney filed a complaint on June 26, 2012 that charged defendant with evading an officer with willful disregard for safety (Veh. Code, § 2800.2, subd. (a), count 1, a felony); transporting marijuana (Health & Saf. Code, former § 11360, subd. (a), count 2, a felony); cultivating marijuana (*id*., § 11358, count 3,

a felony); and possessing drug paraphernalia (*id*., § 11364, subd. (a), count 4, a misdemeanor). The complaint also alleged, pursuant to section 667.5(b), that defendant had served four prior prison terms.

2. *The Negotiated Disposition*

Defendant and the People agreed to a negotiated disposition under which the prosecutor moved to reduce the count 1 evading charge to a misdemeanor and to dismiss counts 3 and 4. In return, defendant agreed to plead no contest to counts 1 and 2 and to admit the three most recent prior prison terms. On September 6, 2012, the court granted the prosecutor's motions to reduce the evading charge to a misdemeanor and to dismiss counts 3 and 4. Also on September 6, 2012, defendant pleaded no contest to count 1 (misdemeanor evading) and count 2 (felony marijuana transportation). And he admitted three prior prison terms: (1) a 1998 term for burglary (§§ 459, 460, subd. (b)), (2) a 2002 term for possession of a controlled substance (Health & Saf. Code, former § 11377, subd. (a)), and (3) a 2004 term for possession of a controlled substance (*ibid*.).

3. *The Sentence and the Revocation of Mandatory Supervision*

On October 25, 2012, in accordance with the negotiated agreement, the court imposed what is known as a "split sentence."[2] The court orally pronounced a seven-year sentence in county jail pursuant to section 1170, subdivision (h)(5)(B). The seven-year term consisted of the upper term of four years on count 2 and an additional three years for the prison prior allegations. The court suspended execution of the concluding five years

[2] "A split sentence is a hybrid sentence in which a trial court suspends execution of a portion of the term and releases the defendant into the community under the mandatory supervision of the county probation department. Such sentences are imposed pursuant to Penal Code section 1170, subdivision (h)(5)(B)(i), a provision originally adopted as part of the '2011 Realignment Legislation addressing public safety.' (Criminal Justice Realignment Act of 2011 (Realignment Act), operative Oct. 1, 2011, as added by Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 1.)" (*People v. Camp* (2015) 233 Cal.App.4th 461, 464, fn. 1 (*Camp*).)

of the seven-year term and ordered that defendant be subject to mandatory supervision during that time. A felony abstract of judgment was filed on October 26, 2012.

Defendant admitted to violating the terms of his mandatory supervision on three occasions. On July 1, 2015, following the third violation, the court revoked defendant's mandatory supervision and ordered him to serve the balance of his previously imposed sentence.

4. *The Notice of Appeal*

The trial court granted defendant's request for a certificate of probable cause, which alleged that the trial court had coerced defendant into waiving his appellate rights as a condition of the plea, as well as that defendant was wrongfully charged with cultivating marijuana. Defendant timely appealed from the July 1, 2015 order.

5. *The Reduction of Prior Felony Convictions to Misdemeanors*

In December 2015, the convictions underlying two of defendant's three admitted prior prison terms were reduced to misdemeanors pursuant to section 1170.18. Specifically, his 2002 and 2004 convictions for possession of a controlled substance (Health & Saf. Code, former § 11377, subd. (a)) were designated misdemeanors.

II. DISCUSSION

A. Health and Safety Code Section 11360 Does Not Apply Retroactively to Defendant

At the time of defendant's 2012 conviction for transporting marijuana in violation of Health and Safety Code former section 11360, courts had interpreted that provision as applying to transportation for both personal use and sale. (*People v. Rogers* (1971) 5 Cal.3d 129, 134-135, superseded by statute.) Accordingly, intent to sell was not an element of the crime. Effective January 1, 2016, the Legislature amended Health and Safety Code section 11360 to define "transport" to mean "transport for sale." (Stats. 2015, ch. 77 § 1.)

Defendant contends that there was no evidence he intended to sell the marijuana he was convicted of transporting in 2012, such that his transportation conviction should be reduced from a felony to a misdemeanor pursuant to the amended version of Health and Safety Code section 11360.[3] He requests that we so modify the judgment of conviction and remand for resentencing. Alternatively, defendant requests that the matter be remanded to allow him to withdraw his plea. The People respond that Health and Safety Code section 11360 does not apply retroactively to defendant.

1. *Retroactive Application of Criminal Statutes*

The ordinary presumption is that statutes apply prospectively. (*People v. Brown* (2012) 54 Cal.4th 314, 323 (*Brown*).) Our Supreme Court announced an exception to that rule in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*): "When the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date." (*Brown*, *supra*, 54 Cal.4th at p. 323, fn. omitted.)

Defendant maintains that Health and Safety Code section 11360 applies retroactively to him under *Estrada*. He contends there is no final judgment against him because the court retained jurisdiction to modify the mandatory supervision portion of his sentence. The People respond that Health and Safety Code section 11360 does not apply retroactively to defendant because his 2012 judgment of conviction has long been final. Thus, this appeal raises the question whether a judgment is final where the court imposes a split sentence. Before addressing that question, we consider the statutory basis for such sentences.

[3] Defendant claims the applicable misdemeanor is set forth in Health and Safety Code section 11360, subdivision (b). But, like subdivision (a), subdivision (b) requires proof of intent to sell in the context of transportation.

2. *Split Sentences and Mandatory Supervision*

In 2011, the Legislature enacted the Criminal Justice Realignment Act, under which certain felons no longer serve their sentences in state prison. (*People v. Scott* (2014) 58 Cal.4th 1415, 1418.) Instead, those felons "serve their sentences either entirely in county jail or partly in county jail and partly under the mandatory supervision of the county probation officer." (*Id.* at pp. 1418-1419.) A sentence to be served partly in county jail and partly under mandatory supervision is known as a "split sentence," and is imposed under section 1170, subdivision (h)(5). That provision states, in relevant part: "[T]he court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion. [¶] (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. . . ." (§ 1170, subd. (h)(5).) Thus, "mandatory supervision is achieved by suspending execution of the concluding portion of the realigned sentence." (*People v. Borynack* (2015) 238 Cal.App.4th 958, 963, fn. omitted.)

3. *Analysis*

As noted, at issue here is whether judgment was rendered when the trial court imposed a split sentence in 2012. We conclude it was.

In criminal cases, "judgment is synonymous with the imposition of sentence . . . ." (*People v. Perez* (1979) 23 Cal.3d 545, 549, fn. 2; see *People v. Karaman* (1992) 4 Cal.4th 335, 344, fn. 9 ["In a criminal case, judgment is rendered when the trial court orally pronounces sentence."]; *People v. Ibanez* (1999) 76 Cal.App.4th 537, 543 [same].) Here, the court orally pronounced and imposed sentence on defendant on October 25, 2012. In doing so, it rendered judgment.

Our conclusion is not altered by the fact that the court suspended execution of the mandatory supervision portion of the sentence. (§ 1170, subd. (h)(5).) Courts likewise impose sentences but suspend their execution in the probation context.[4] (*Phillips*, *supra*, 17 Cal.2d at p. 58.) In that circumstance, "a judgment of conviction has been rendered from which an appeal can be taken, and upon affirmance, it becomes a final judgment." (*Ibid.*; *People v. Howard* (1997) 16 Cal.4th 1081, 1087 (*Howard*) ["where a sentence has actually been imposed but its execution suspended, 'The revocation of the suspension of execution of the judgment brings the former judgment into full force and effect . . . .' "].) Logic dictates that the same is true in the context of mandatory supervision.

Defendant contends that the court did not render judgment in 2012 because it "reserved jurisdiction as to [the mandatory supervision] five-year portion of the sentence" and was free to modify that portion of the sentence when it revoked mandatory supervision. Relying on *Camp*, defendant contends that the court could have sentenced him to less than five years in custody upon revoking mandatory supervision. But *Camp* does not support that proposition. There, the majority held that the trial court had the authority to terminate the defendant's mandatory supervision without ordering him to serve the suspended portion of his sentence in custody. (*Camp*, *supra*, 233 Cal.App.4th

[4] "The power of the trial court to grant probation after a conviction may be exercised in either of two ways: the court may suspend the imposition of the sentence . . . or it may impose the sentence and thereafter suspend its execution." (*In re Phillips* (1941) 17 Cal.2d 55, 58 (*Phillips*).)

at p. 471.) The court did not opine as to whether a court that terminates mandatory supervision and orders confinement is free to alter the previously imposed sentence. (*Id*. at pp. 471-472 [noting that, under *Howard*, *supra*, 16 Cal.4th 1081, where a trial court revokes and terminates probation and opts to "order a prison commitment" it must " 'commit the probationer to prison for the [precise] term prescribed in the suspended sentence' "].) Even assuming the court was free to order defendant to serve less than five years, defendant does not explain how that freedom impacts the finality of his judgment of conviction. Thus, the argument merits no further consideration. (See *People v*. *Miralrio* (2008) 167 Cal.App.4th 448, 452, fn. 4 [appellate court not required to address undeveloped claims or ones inadequately briefed]; *People v*. *Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4 [arguments raised in a perfunctory fashion are waived].)

Defendant suggests that a prior final judgment would preclude him from appealing the July 2015 order. Not so. As his opening brief acknowledges, that order is appealable as a postjudgment order. (§ 1237, subd. (b).)

For the foregoing reasons, we conclude that the trial court rendered judgment in 2012 when it imposed the split sentence on defendant. Because defendant did not appeal, that judgment became final for purposes of *Estrada*, such that Health and Safety Code section 11360 does not apply retroactively to him. Therefore, defendant is not entitled to a modification of the judgment or an opportunity to withdraw his plea.

B. Proposition 47 Does Not Require That the Prior Prison Term Enhancements Be Stricken

Defendant requests that we modify the judgment to strike the 2002 and 2004 prior prison term enhancements on the ground that the underlying convictions were reduced to misdemeanors pursuant to Proposition 47. He further requests that we strike the 1998 prison prior enhancement under the so-called "washout rule," which he says applies once the 2002 and 2004 felony convictions are deemed misdemeanors. The People respond

that the Proposition 47 reductions have no impact on the prior prison term enhancements.[5]

1. *Legal Background*

a. Proposition 47

Voters enacted Proposition 47, "the Safe Neighborhoods and Schools Act," in November 2014. (Proposition 47, as approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014; see Cal. Const., art. II, § 10, subd. (a).) "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091 (*Rivera*).)

"Proposition 47 also created a new resentencing provision: section 1170.18." (*Rivera*, *supra*, 233 Cal.App.4th at p. 1091.) Under subdivision (a) of that provision, a person "currently serving" a felony sentence for an offense that is now a misdemeanor under Proposition 47 may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) Where a petitioner satisfies the criteria in section 1170.18, the court must recall the petitioner's felony sentence and resentence him or her "to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose

[5] This issue is currently pending before the Supreme Court. (*People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted March 30, 2016, S232900 (*Valenzuela*); *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted April 27, 2016, S233011; *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201; *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016, S233539.) *Valenzuela* presents the following issue: "Is defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court had reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?" (<http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2135098&doc_no=S232900>[as of October 28, 2016].)

an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) Under section 1170.18, subdivisions (f) and (g), a person who has completed a felony sentence for an offense that would now be a misdemeanor under Proposition 47 is entitled to have his or her felony conviction designated as a misdemeanor upon filing an application with the trial court. Subdivision (k) of section 1170.18 provides that "[a]ny felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." (The "Chapter 2" mentioned in section 1170.18, subdivision (k) refers to §§ 29800 to 29875, which contain prohibitions on firearm access by persons with certain criminal convictions.)

The foregoing remedial procedures are available for a limited time: "Any petition or application under this section shall be filed within three years after the effective date of the act that added this section or at a later date upon a showing of good cause." (§ 1170.18, subd. (j).)

b. The Prior Prison Term Enhancement of Section 667.5(b)

Section 667.5(b) imposes a one-year enhancement for committing an offense that leads to a felony conviction within five years of having been released from custody on another felony conviction. (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 740.) "Sentence enhancements for prior prison terms are based on the defendant's status as a recidivist, and not on the underlying criminal conduct, or the act or omission, giving rise to the current conviction." (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936.)

The purpose of the section 667.5(b) prior prison term enhancement is " 'to punish individuals' who have shown that they are ' "hardened criminal[s] who [are] undeterred by the fear of prison." ' " (*In re Preston* (2009) 176 Cal.App.4th 1109, 1115.)

Historically, "[i]mposition of a sentence enhancement under . . . section 667.5 require[d] proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. (*People v. Elmore* (1990) 225 Cal.App.3d 953, 956-957.)" (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) The fourth requirement "is commonly referred to as the 'washout rule' " because "a prior felony conviction and prison term can be 'washed out' or nullified for the purposes of section 667.5 . . . if a defendant is free from both prison custody *and* the commission of a new felony for *any* five-year period following discharge from custody or release on parole . . . ." (*People v. Fielder* (2004) 114 Cal.App.4th 1221, 1229.) While section 667.5(b) has been amended to account for realignment, the basic prerequisites for its imposition remain unchanged.

c. Principles of Statutory Construction

" 'In interpreting a voter initiative like [Proposition 47], we apply the same principles that govern statutory construction.' " (*Rivera, supra*, 233 Cal.App.4th at p. 1099.) In construing a statute, our fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose. (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265 (*Cornett*).) "In the case of [an initiative] adopted by the voters, their intent governs." (*People v. Jones* (1993) 5 Cal.4th 1142, 1146.)

" 'We begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent.' [Citations.] The plain meaning controls if there is no ambiguity in the statutory language. [Citation.]" (*Cornett, supra*, 53 Cal.4th at p. 1265.) "We do not, however, consider the statutory language 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the statute . . . in order to determine the scope

and purpose of the provision . . . . [Citation.]' [Citation.] That is, we construe the words in question ' "in context, keeping in mind the nature and obvious purpose of the statute . . . ." [Citation.]' [Citation.] We must harmonize 'the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.' [Citations.]" (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

"A statutory provision is ambiguous if it is susceptible of two reasonable interpretations." (*People v. Dieck* (2009) 46 Cal.4th 934, 940.) "If the language is unambiguous and a literal construction would not result in absurd consequences, we presume that the voters intended the meaning on the face of the initiative and the plain meaning governs. [Citations.] If the language is ambiguous, we may consider the analyses and arguments contained in the official ballot pamphlet as extrinsic evidence of the voters' intent and understanding of the initiative." (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1316-1317.)

2. *Analysis*

Defendant contends that he is entitled to have two section 667.5(b) enhancements stricken because the underlying felony convictions (from 2002 and 2004) have been designated misdemeanors and must "be considered . . . misdemeanor[s] for all purposes" under section 1170.18, subdivision (k). He contends that his third section 667.5(b) enhancement, based on a 1998 conviction, also should be stricken pursuant to the washout rule because—when the 2002 and 2004 convictions are considered misdemeanors—there was a five-year period between 1998 and 2012 during which he was free from prison custody and committed no felonies.

As an initial matter, we conclude that, contrary to defendant's protestations, he is seeking *retroactive* application of section 1170.18. At the time of defendant's 2012 conviction and sentencing, his 2002 and 2004 convictions for possession of a controlled substance were felony convictions and properly served as the basis for the trial court's

imposition of section 667.5(b) enhancements. Those convictions were not redesignated as misdemeanors until December 2015—*after* defendant was sentenced, *after* his judgment of conviction was final, and *after* the trial court terminated mandatory supervision and ordered defendant to serve the balance of his previously imposed sentence. To grant defendant's requested relief, we would have to hold that the redesignation of the felony convictions as misdemeanors operates retroactively to the time of defendant's sentencing. We conclude that such redesignations operate prospectively for the reasons set forth below.

a. Plain Meaning

At issue in this case is the meaning of the phrase "a misdemeanor for all purposes . . . ." (§ 1170.18, subd. (k).) As defendant acknowledges, that language is nearly identical to language in section 17, subdivision (b) addressing the circumstances under which a wobbler offense "is a misdemeanor for all purposes . . . ." (See *Rivera, supra,* 233 Cal.App.4th at p. 1100 [noting that the language of the two provisions is "not significantly different"].)

In *People v. Park* (2013) 56 Cal.4th 782 (*Park*), the California Supreme Court construed the pertinent language in section 17, subdivision (b) and concluded that "the reduction of the offense to a misdemeanor does not apply retroactively." (*Rivera, supra,* 233 Cal.App.4th at p. 1100.) The court stated: "From the decisions addressing the effect and scope of section 17(b), we discern a long-held, uniform understanding that when a wobbler is reduced to a misdemeanor in accordance with the statutory procedures, the offense *thereafter* is deemed a 'misdemeanor for all purposes,' except when the Legislature has specifically directed otherwise." (*Park, supra,* at p. 795, italics added.) The court noted that "[t]he language of section 17 added in 1874 . . . gave rise to the . . . rule that if the court exercised its discretion by imposing a sentence other than commitment to state prison, the defendant stood convicted of a misdemeanor, but only from that point forward; classification of the offense as a misdemeanor did not operate

retroactively to the time of the crime's commission, the charge, or the adjudication of guilt." (*Id.* at p. 791, fn. 6.)

"Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of the judicial construction of the law that served as its source. [Citation.]" (*In re Harris* (1989) 49 Cal.3d 131, 136 (*Harris*).) Accordingly, there arises a presumption that, like section 17, subdivision (b), section 1170.18, subdivision (k) applies prospectively. (*People v. Weidert* (1985) 39 Cal.3d 836, 845-846 ["Where the language of [an initiative] statute uses terms that have been judicially construed, ' "the presumption is almost irresistible" ' that the terms have been used ' "in the precise and technical sense which had been placed upon them by the courts." ' "]; *Rivera*, *supra*, 233 Cal.App.4th at p. 1100 ["[w]e presume the voters 'intended the same construction' for the language in section 1170.18, subdivision (k), [as in section 17, subdivision (b)] 'unless a contrary intent clearly appears' "].)

Defendant's reliance on *Park* is misplaced. In *Park*, the court held that the trial court erred in imposing a sentence enhancement based on a prior wobbler conviction that had been reduced to a misdemeanor under section 17. (*Park*, *supra*, 56 Cal.4th at p. 799.) Significantly, the defendant's wobbler had been reduced to a misdemeanor "before defendant committed the current crimes," let alone was convicted and sentenced. (*Id.* at p. 787.) By contrast, here defendant's convictions were designated misdemeanors *after* sentencing for the current offense. Therefore, *Park* is distinguishable. Defendant's reliance on *People v. Flores* (1979) 92 Cal.App.3d 461 is misplaced for the same reason. (*Id.* at pp. 464, 470, 474 [where 1966 conviction became a misdemeanor in 1975, it could not serve as the basis for a prior prison term enhancement when defendant was sentenced for a 1977 crime].)

Applying section 1170.18, subdivision (k) prospectively does not render the "for all purposes" language superfluous, as defendant contends. With respect to retroactivity, the question is *when* the conviction is considered a "misdemeanor for all purposes"—

going forward only or for all time. Under either construction, "for all purposes" remains in effect.

b. Proposition 47 as a Whole

The structure of Proposition 47 as a whole does not rebut the presumption that section 1170.18, subdivision (k) applies prospectively. Rather, it confirms such a construction.

Proposition 47 created two procedural mechanisms pursuant to which individuals previously convicted of felonies that are now misdemeanors under Proposition 47 can benefit from the initiative. (§§ 1170.18, subds. (a), (b), (f), (g).) But the availability of those remedial mechanisms is closely circumscribed. For example, resentencing is generally available for those currently serving a sentence for a felony that would have been a misdemeanor under Proposition 47. But it is unavailable for those convicted of certain serious and/or violent felonies, required to register as sex offenders, or judicially determined to pose an unreasonable risk of danger to public safety if resentenced. (§ 1170.18, subds. (b), (c), (i).) Those who are resentenced remain subject to one year of parole and potential parole revocation terms. (*Id.*, subd. (d).) Convictions resentenced as misdemeanors pursuant to a petition for recall are still regarded as felonies for purposes of "conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." (§ 1170.18, subd. (k).) Finally, the statute limits the time frame in which convicted persons may take advantage of section 1170.18's procedures. (*Id.*, subd. (j).) Thus, as a whole, section 1170.18 evinces an intent that the statute have limited retroactive effect only.

We also find it significant that Proposition 47 does not set forth a mechanism for striking a section 667.5 enhancement where the underlying conviction has been designated a misdemeanor pursuant to section 1170.18, subdivision (g). The judicial creation of such a mechanism would contravene section 1170.18, subdivision (n), which

provides that "[n]othing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview" of Proposition 47.

c. Voters' Intent

We consider extrinsic evidence of voter intent—namely, ballot materials—to determine whether it rebuts our presumption that section 1170.18, subdivision (k) applies prospectively. (*Harris*, *supra*, 49 Cal.3d at p. 136 [considering whether extrinsic evidence rebutted presumption that voters intended judicially construed language to carry the meaning placed upon it by courts].) It does not.

Two of Proposition 47's stated purposes are to "[a]uthorize *consideration* of resentencing for anyone who is currently serving a sentence for any of the offenses" that would be made misdemeanors by Proposition 47, and to "[r]equire a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 3, subds. (4), (5), p. 70, italics added.) Voters were assured that "*Proposition 47 does not require automatic release of anyone.* There is no automatic release. It includes strict protections to protect public safety and make sure rapists, murderers, molesters and the most dangerous criminals cannot benefit." (Voter Information Guide, *supra*, Rebuttal to Argument Against Prop. 47, p. 39.) Defendant would have us construe section 1170.18, subdivision (k) as allowing for the automatic release of those who are incarcerated only because of section 667.5(b) enhancements premised on felony convictions that have been designated misdemeanors. That construction is plainly contrary to the voters' intent in enacting Proposition 47.

Defendant notes that one argument in favor of Proposition 47 was that it would save tax dollars that would otherwise be spent imprisoning nonviolent offenders. (Voter Information Guide, *supra*, Argument in Favor of Proposition 47, p. 38.) But Proposition 47's remedial mechanisms achieve that goal, even if section 1170.18, subdivision (k) is not given retroactive effect.

d. Due Process

In a single paragraph in his supplemental opening brief, defendant argues that his right to due process is violated by the "continued imposition of prison-prior enhancements based on the now misdemeanor convictions . . . because where a state court fails to honor the procedures attendant to a state-created liberty interest, that failure implicates federal due process rights." Defendant has failed to adequately articulate the due process contention he raises, and thus we deem the claim forfeited. (See, e.g., *People v. Bryant* (2013) 222 Cal.App.4th 1196, 1206, fn. 11 [concluding ineffective assistance of counsel claim was forfeited where party failed to "adequately brief[ ] the issue"].)

In summary, the designation of defendant's 2002 and 2004 convictions as misdemeanors pursuant to section 1170.18 did not retroactively invalidate the trial court's earlier imposition of section 667.5(b) enhancements based on those convictions.

III. DISPOSITION

The trial court's order revoking defendant's mandatory supervision is affirmed.

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ELIA, J.

WE CONCUR:

_____

RUSHING, P. J.

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PREMO, J.

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